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# RATIONALIZATION OF THE WORK OF THE COMMISSION

## Letter dated 10 July 2000 from the Permanent Representative of the Netherlands to the United Nations Office at Geneva addressed to the Chairman of the Commission on Human Rights

I have the honour to draw your attention to the report entitled "The functioning of the United Nations Commission on Human Rights" by the Netherlands Advisory Council on International Affairs (see annex).

I should be grateful if you would have the text of the present letter and its annex* circulated as a document of the Commission on Human Rights, under the item entitled "Rationalization of the work of the Commission".

Signed: Hans J. HEINEMANN

Ambassador
Permanent Representative

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* Reproduced as received, in English only.

Annex

# THE FUNCTIONING OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS

No. 11, September 1999

ADVISORY COUNCIL ON INTERNATIONAL AFFAIRS
ADVIESRAAD INTERNATIONALE VRAAGSTUKKEN

AIV

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**Annex III** List of abbreviations

## Foreword

On 29 October 1998, the Minister of Foreign Affairs, the Minister of Defence and the Minister for Development Cooperation asked the Advisory Council on International Affairs (AIV) to produce an advisory report on the functioning of the United Nations Commission on Human Rights.

The report was prepared by the Human Rights Committee (CMR) of the Advisory Council. On 1 September 1999 the Committee consisted of the following persons: Professor P.R. Baehr*, Professor C.E. von Benda-Beckmann-Droogleever Fortuijn (vice-chair), Professor T.C. van Boven*, Dr M.C. Castermans-Holleman*, T. Etty*, Professor C. Flinterman* (chair), Professor W.J.M. van Genugten*, L.Y. Gonçalves-Ho Kang You, C. Hak*, M. Koers-van der Linden and F. Kuitenbrouwer. Members whose names are marked with an asterisk (*) were in the sub-committee responsible for drafting the report.

The sub-committee was originally chaired by Geb Ringnalda. On 24 February 1999, during a meeting of the sub-committee, he became unwell and was taken to hospital, where he died shortly after his arrival. His involvement in and knowledge of the functioning of the UN in general and the role of the UN in protecting and promoting human rights in particular made him an ideal chairman. The preparation of the report was continued in the same spirit under the chairmanship of Professor C. Flinterman.

Professor N.J. Schrijver of the Development Cooperation Committee (COS) also helped to prepare the report. Additional assistance was provided above all by Dr B.G. Tanzib-Lie of the Ministry of Foreign Affairs (DMD/RM). The executive secretary was T.D.J. Oostenbrink, who was assisted by W. van Dok, a trainee.

The AIV adopted this report on 10 September 1999.

# I Introduction

On 29 October 1998, the Minister of Foreign Affairs, the Minister of Defence and the Minister for Development Cooperation asked the Advisory Council on International Affairs (AIV) to submit recommendations on the functioning of the United Nations Commission on Human Rights.

The terms of reference set out in the request to the AIV (see annex I), which was prompted by an inquiry by Mr Koenders in the Lower House of Parliament, were essentially to submit recommendations on possible improvements to the working methods and functioning of the United Nations Commission on Human Rights (the Commission), in particular the establishment of its agenda and the instruments it uses.

In its recommendations the AIV first of all considers the general aspects of the problem. Chapter II examines some of the reasons why the number of subjects on the Commission's agenda has grown and how the Commission has tried to rationalise this process.

The subsequent chapters deal with various specific policy issues. Chapter III considers a subject raised in the request for advice, namely whether country and thematic resolutions are still appropriate instruments for ensuring observance of human rights. The AIV also examines whether other instruments could be used to put more effective pressure on notorious offenders. Among the subjects considered are what is known as 'critical dialogue' and a possible role for other UN agencies in the field of human rights. This chapter also deals with the extent to which the debate on the implementation of economic, social and cultural rights should be conducted primarily in the specialised agencies and financial institutions such as UNESCO, FAO, ILO, WHO, IMF and World Bank. It goes on to deal with the role of the non-governmental organisations (NGOs) since the AIV has been asked to express its opinion on the role and functioning of this growing group in the Commission.

Finally, chapter IV examines the relationship between the Commission and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (the Sub-Commission).[1] When the Minister of Foreign Affairs met the AIV Human Rights Committee in February 1999 he expressly requested the committee to submit written recommendations on this subject. The AIV will discuss recommendation 12 of the UN report on the functioning of the Commission, which was drawn up under the direction of the South African chairperson Selebi.[2] This recommendation deals specifically with relations between the two institutions.

Chapter V contains a summary of the recommendations.

1 See also: the Advisory Committee on Human Rights and Foreign Policy (ACM), 'The role of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities', advisory report no. 20. The Hague, Ministry of Foreign Affairs, 1996.

2 See: Report of the Bureau of the 54th Session of the Commission on Human Rights, submitted pursuant to Commission Decision 1998/12 (UN Doc. E/CN.4/1999/104).

# II Brief description of developments

## II a Context

The UN adopted the resolution to establish the Commission in 1946. During the 50-odd years of the Commission's existence its function, composition and place in the UN system have changed considerably.[3] Whereas in the first stage of its existence it concentrated its efforts on international standard-setting, resulting in the Universal Declaration of Human Rights and the two major international covenants (all of which are commonly referred to the International Bill of Human Rights), the Commission has gradually evolved into what it is today: the main political and diplomatic policy body of the UN in the field of human rights.

Although the Commission was intended to consist of government representatives and not of persons in their individual and independent capacities, it was characterised in its early years by personalities such as Eleanor Roosevelt and René Cassin, whose authority and expertise allowed them to put their own stamp on the activities of the Commission. As the Commission began to concern itself more and more with violations of human rights in numerous countries, with all the political implications that this entailed, the interests of governments started to play a more important role in the Commission. In addition, the high priority which human rights have acquired on the international political agenda over the years and particularly today has had a major influence on the character and composition of the Commission. The Commission is therefore a purely political body whose course and, above all, decisions are controlled by politicians and diplomats, and in which regional group interests and differences tend to predominate. This should be taken into account in assessing the work of the Commission and discussing desirable changes and developments.

It also follows from the above that the place accorded to the Commission in the UN Charter, namely that of a functional commission of the Economic and Social Council (ECOSOC, Art. 68), is no longer in keeping with the reality. Although the Commission can still formally be described in these terms, it has actually become, as noted above, the UN's main political and policy body in the human rights field.

## II b Developments

The years immediately after 1946 were, as mentioned above, dominated by the preparation of the International Bill of Human Rights. Agreement on the Universal Declaration of Human Rights was achieved within two years. The process of putting into effect the Universal Declaration, which was proclaimed as a 'common standard of achievement' and which directed that every individual and every organ of society should strive to secure the 'universal and effective recognition and observance of the rights and freedoms, culminated in the adoption of the International Covenant on Civil and Political

3 For a detailed description of the functioning of the Commission in the period 1946-1986 see Howard Tolley, Jr., 'The UN Commission on Human Rights', Westview Special Studies in International Relations, Westview Press/Boulder and London, 1987. See also: Philip Alston, 'The Commission on Human Rights' in Alston (ed.), The United Nations and Human Rights: A Critical Appraisal, Oxford: Clarendon Press, 1992, pp. 126-210.

Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC). The Commission finished its work on the preparation of the Covenants in 1954, but it was not until 1966 that agreement was reached in the UN General Assembly on the final texts, parts of which had been slightly amended.

Between 1954 and 1966 the Commission tended to be engaged more in promoting than in protecting human rights. On the basis of the American-inspired Education and Conviction Action Plan, the Commission focused during this period on three main subjects: advisory services (seminars, exchanges of experts etc.), global studies of specific rights or categories of rights (e.g. the rights of prisoners) and annual country reports on general developments, progress achieved and measures taken to safeguard human liberty.[4]

Both the growing involvement of the newly independent countries in Africa in the development of the human rights system and the sharper divide between East and West gradually led to changes in the composition of the Commission.[5] In the first twenty years of its existence the Commission dealt not only with the matters described above but also with such subjects as decolonisation and racism. However, it was not customary to raise the subject of situations in specific countries. Later the focus shifted from standard-setting to monitoring compliance and dealing with reports of and complaints about violations.

The UN adopted a twin-track approach. First, it adopted a series of covenants each having its own monitoring system and, second, it established over the years a large number of Charter-based mechanisms. This change of focus was based primarily on the amended mandate of 1966[6] and the adoption of resolution 8 (XXIII) of 1967 in which the subject of 'human rights violations anywhere in the world' was added to the Commission's agenda. Later that year the ECOSOC made it possible for the Commission and Sub-Commission to consider in public session cases of serious violations of human rights (ECOSOC resolution 1235 (XLII)).[7] The working groups and rapporteurs appointed under this mandate focused either on the human rights situation in a specific country or, from the early 1980s onwards, on specific practices that occur in many countries and are regarded as serious violations of human rights. As a result, an

4 For example, an ad hoc group was chosen from the Commission in 1961 to review the 59 country reports that had been submitted by that date. After 1962 NGO information too was included in the reviews.

5 The membership of the Commission was enlarged step by step. The number of members increased from 18 in 1946 to 21 in 1962, 32 in 1967, 43 in 1980 and 53 in 1992. Above all the enlargements since 1962 have changed the 'balance of power' within the Commission in the sense that the original dominance of the Western countries has diminished.

6 See ECOSOC resolution 1164 (XLI) 1966 and UN General Assembly resolution 2144 (XXI) 1966.

7 In ECOSOC resolution 1235 (XLII) the Sub-Commission was asked to assist the Commission. More specifically the Sub-Commission was requested to prepare reports which the Commission could use in dealing with violations (resolution 8 (XXIII), section 2) and was also asked to draw the attention of the Commission to situations in which there was a systematic pattern of gross violations (resolution 8 (XXIII), section 6).

important, vigorous and dynamic element was added to the system of global protection of human rights.[8] This substantial widening of the mandate means that states, which are the primary addressees of human rights legislation, can be held accountable and hold one another accountable for the observance of human rights.

Resolution 1235 (the 'public procedure') was supplemented in 1970 by a confidential procedure based on ECOSOC resolution 1503 (XLVIII). This resolution called on the Sub-Commission to make a selection of the complaints that seemed to point to a systematic pattern of gross violations of human rights and to draw them to the attention of the Commission. In addition to this expansion of the 'protection activities', the Commission also continued to work in these years to set new standards and promote human rights. The Convention on the Suppression and Punishment of the International Crime of Apartheid (1973)[9], the debates on the importance of economic, social and cultural rights in general (and the right of development in particular) and the proclamation of a decade against racism are just a few examples of the Commission's work.

In the period from 1980 to 1990 it proved possible to reach agreement on new mechanisms[10] and standard-setting[11] and it was decided substantially to expand the Programme of Advisory Services. In addition, the Commission adopted resolutions on the organisation of seminars on a wide range of subjects and on an extensive programme of consciousness-raising and education. This period was characterised by an above-average increase in the number of subjects dealt with under the various agenda items and an increase in the number of resolutions adopted.[12]

The developments described above reflect the growing interest in and concern about numerous problems, situations in particular countries and groups of people. This is also evident from the number of people registered as taking part in the meetings of the Commission. The number continues to grow annually as a result of the increase in the number of UN Member States, the spectacular rise in the number of NGOs in the human rights fields and the greater interest shown in the work of the Commission by

8 See inter alia: ACM, 'The role of the Sub-Commission for on Prevention of Discrimination and Protection of Minorities', advisory report number 20, and 'UN Monitoring of Human Rights', advisory report number 22, The Hague, Ministry of Foreign Affairs, 1996.

9 Standard-setting was also dealt with in other forums. An example is the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW, 1979).

10 The establishment of a Working Group on Enforced or Involuntary Disappearances (1980), the Special thematic Rapporteur on Summary and Arbitrary Executions (1982) and the Special thematic Rapporteur on Torture (1985) are just a few examples of this.

11 Agreement was reached on two conventions (torture and children's rights) and a number of declarations (religious intolerance, the right to development). The Commission also studied and worked on the setting of additional standards in other fields, such as indigenous peoples, minorities, human rights defenders, rights of prisoners and the right to leave a country.

12 26 resolutions were adopted in 1978. In 1988 the number had risen to 78, although the agenda was virtually identical. There was a further increase to 97 in 1994. The attempts to rationalise the agenda are partly responsible for reducing the number of items to 82 in 1999.

regional and specialised agencies.[13] This has had a direct effect on the functioning of the Commission, for example in the form of oversubscribed lists of speakers, protracted meetings, problems with the provision of documents and translation capacity, and lack of meeting rooms.

The High Commissioner for Human Rights (UNHCHR) was given a special role in the coordination of UN activities in the field of human rights. The post of High Commissioner was created in 1993 and resulted in the Commission's support services unit being renamed in 1997 as the Office of the High Commissioner for Human Rights. In order to meet criticisms of the support services, efforts have been made, particularly in recent years, to improve the relationship between the HCHR Office and the Commission. One example is the improved cooperation between the UN Secretary-General, the High Commissioner and the rapporteurs and chairmen of the working groups responsible for implementing procedures; the aim is to enhance the effectiveness of the Commission's activities. The HCHR Office has been thoroughly reorganised and various provisions for the staff have been improved and measures taken to enhance the material and logistical support given to the Commission. However, the budgetary situation continues to be a major obstacle, in addition to existing political and organisational obstacles. Given the serious shortfall in the budget of the HCHR Office as regularly fixed by the UN General Assembly, it will remain extremely difficult to carry out effectively the greatly increased volume of human rights activities.

Over the years the Commission itself has made attempts in the institutional field to rationalise the agenda and working methods. The wish of the Non-Aligned Countries to increase the number of members was seized upon by the Western countries in 1989 as an opportunity to make proposals for enhancement of the working methods. The Non-Aligned Countries responded by coming up with an extensive package of counter-proposals. The Commission did not come to a decision and referred the matter to ECOSOC. This agency then decided both to increase the number of members and to endorse many of the proposals put forward by the West. However, the ultimate results of this reform remained very limited. A further attempt at substantial reform of the agenda was made in 1994 when the Netherlands was in the chair. The main resolutions involved measures to combine and reduce the number of agenda items and to take the issue of South Africa off the agenda in view of the progress made in that country. With the exception of the resolution to remove the separate and time-consuming item of South Africa from the agenda, the resolutions were ultimately blocked by a small group of countries.[14] Nonetheless, the debate on this subject resulted in a growing awareness on the part of the Member States that real changes were necessary. Since 1994 this has led to changes to the form and content of resolutions (fewer, shorter and more incisive) and to a search for ways of including in resolutions of a condemnatory nature concrete proposals for improving the human rights situation in the country concerned.

13 1,603 people attended the Session in 1993. The 55th Session was attended by 3,080 people in 1998 and 3,240 in 1999 (see UN Documents E/CN.4/1994/Wg.12/2, E/CN.4/1999/109 and a letter of 29 April 1999 from the director of the Information Service to the chairperson of the Commission).

14 The group included Cuba, Iran, Israel and the United States, each of which had its own reasons for opposing the resolutions.

Further moves to reform the agenda and improve working methods occurred in 1998 under the direction of the South African chairperson Selebi. These moves led later that year to the publication of a sizeable report containing a wide range of proposals, which have since been the subject of extensive discussions between the various regional groups in the Commission. The proposals relate among other things to measures to improve and strengthen the composition of the group of country and thematic rapporteurs, a review of the 1503 procedure (consistent pattern of violations), and improvements to the procedure of the Sub-Commission and of the Commission's working groups concerned with standard-setting. The talks on the report during the 55th Session of the Commission in 1999 proved very difficult. Much of the time allocated to debate of this subject was spent on procedural matters. A group of 10-15 countries (the 'Like-Minded Group')[15] took a hard line and attempted to prevent or obstruct substantive discussions. Ultimately, concrete results were achieved on only a few minor points during the Session.

The main decision of the Commission during the 55th Session was to establish an inter-sessional, open-ended working group to elaborate further proposals and find solutions to the points on which no agreement could be reached. This working group will have a total of 15 meeting days at its disposal and will report to the 56th Session of the Commission in 2000. The Commission also decided to limit the period for which special rapporteurs are appointed to a maximum of six years and to appoint a person as rapporteur for a second time with a different mandate only in very exceptional circumstances. The Commission also decided that relevant documents and reports should be made available at the earliest possible stage and that the name of the Sub-Commission should be changed to the 'Sub-Commission on the Promotion and Protection of Human Rights'. Lastly, the Commission asked ECOSOC, the Sub-Commission and the chairs of the working groups concerned to consider the proposals in the Selebi report that were relevant to them in order to find solutions to the problems and help make improvements to working methods.

Since it is very important that the Commission function efficiently and effectively, the AIV regards the outcome of the debates during the 55th Session of the Commission as disappointing. The AIV nonetheless recommends to the Netherlands Government that it continue to play an active role in the working group established by the Commission and that it aim to achieve the greatest possible agreement on improvements. Where relevant to the questions put in the request for advice, the AIV examines in chapter III of this report the recommendations made in the Selebi report and the outcome of the debate during the last session of the Commission. As already mentioned, the AIV deals more specifically with the proposals regarding the Sub-Commission in chapter IV.

15 The group included Algeria, China, Cuba, Egypt, India, Iran, Malaysia, Myanmar, Pakistan and Sudan.

# III Concrete policy issues

### Introduction

It was stated in chapter II that the Commission has become the most important political and policy agency of the UN in the human rights field. This means that it is difficult in practice to make changes or improvements to its working methods. The AIV is aware of this short-term 'feasibility problem', but has chosen in this report to examine too whether certain modifications to the working methods are desirable in the longer term in order to improve the functioning of the Commission. The specific subjects raised in the request for advice, such as the function of resolutions, the debate about the implementation of economic, social and cultural rights and the role of NGOs must be viewed in the context of the historical developments described in chapter II and of the instruments (the 'toolkit') which the Commission has created in order to carry out its mandate properly. Attention will also be paid in this connection to the Sub-Commission.

It should also be noted for the record that the functioning of the Commission must also be judged in the light of the functioning of the entire UN human rights programme. Reference may be made in this connection to the activities not only of ECOSOC, the Third Committee of the UN General Assembly, the Security Council and the agencies under the other human rights conventions, but also of the UN field offices (which come under the responsibility of the High Commissioner for Human Rights), the HCHR Office, the special rapporteurs and the specialised agencies. As the request for advice concentrates on the functioning of the Commission itself, the AIV will confine its recommendations to this subject, referring to the other bodies only where they can make a direct contribution to the better functioning of the Commission. Nonetheless, it would be worthwhile to consider analysing in the near future the functioning of the human rights programme of the UN in its entirety.

### III a Country and thematic resolutions

The adoption of resolution 1235 (1967) led to a substantial increase in the number of resolutions relating to situations in specific countries. Initially, only South Africa and the territories occupied by Israel were the subject of such resolutions. However, the number of country resolutions has now proliferated to such an extent that there is growing scepticism about their value. One of the reasons for this scepticism is that on a variety of political grounds resolutions are never adopted for some of the countries where serious violations of human rights occur. In addition, many resolutions are couched in virtually the same words year after year. The question raised in the request for advice, namely whether country and thematic resolutions are still the most appropriate instruments to ensure observance of human rights, should therefore be seen in this light.

Generally speaking, the instrument of country resolutions is taken seriously. It is noteworthy that countries often fiercely oppose the submission of a resolution or a threat to submit one. Indeed, many NGOs regard country resolutions as the ideal instrument in their fight against human rights violations and arrange their lobbying activities accordingly. It is evident in practice that there is growing opposition to consultation about and the submission of such resolutions both in the Commission and in the Third Committee of the UN General Assembly. This may be because there is genuine concern

about whether such a resolution is the correct approach, but it may also be due to the worry of many countries that they themselves may be the next target of such a resolution.

Reference has already been made to the danger of selectiveness in responding to violations of human rights. Another problem occurs if countries are condemned year after year in resolutions formulated in virtually identical terms. In such a situation there is a danger that debate in the Commission will tend to become bogged down in arguments about the text of draft resolutions rather than focusing on the actual human rights situation. In the long run such resolutions have scarcely any impact, certainly if little is done to follow up earlier resolutions.

It should also be noted that European countries, which have traditionally submitted the majority of these resolutions, are less and less willing to take the lead in negotiating on and submitting such resolutions. A major reason for this would seem to be the increased cooperation and coordination within the framework of the European Union. Difficult and time-consuming consultation procedures are often needed to achieve common EU positions, particularly in cases where the partners hold differing views on the desirability of submitting a resolution. Nonetheless, the AIV believes that situations will continue to occur in which a robust approach in the form of a country resolution is desirable or even necessary. Circumstances such as those in Myanmar or Iraq, where serious human rights violations constantly occur, will continue to require a resolution if the attitude towards human rights does not change in these countries. This will be true even if such resolutions are not or cannot be expected to bring about any immediate improvement in the human rights situation. It is important in this connection that the same criteria should always be applied to the different countries in similar cases. Under the terms of the Treaties of Maastricht and Amsterdam, the Netherlands is obliged to reach agreement on a common EU approach within the framework of the Common Foreign and Security Policy (CFSP). If such a common approach proves impossible, the Netherlands should not baulk at submitting such a resolution either alone or together with like-minded countries in cases involving gross violations of human rights.

As a result of the factors described above, there has been a growing trend in recent years to negotiate with countries that are facing possible condemnation in order to find depoliticised alternatives that are regarded as less threatening. For example, increasing use is being made of chairperson's statements, inclusion in thematic resolutions or interventions and, more generally, the establishment of a critical dialogue inside and outside the Commission. However, these alternatives have both advantages and disadvantages, which will be briefly discussed below.

*Chairperson's statements*

The efforts to reach agreement on a chairperson's statement are a recent development. Increasing use has been made of this instrument, particularly since 1995 (Sri Lanka and East Timor). Its use, possibly in combination with a critical dialogue as discussed below, depends on the attitude of the country concerned. Such a statement may be appropriate if a country is anxious to avoid condemnation and is truly willing to cooperate in making improvements; such willingness is crucial. A chairperson's statement may also be preferable to a country resolution in the case of countries that are in transition from an authoritarian to a democratic regime. This allows time to see whether the new rulers are serious about working to achieve a good human rights policy.

Consultation with the country concerned about a chairperson's statement may have both positive and negative effects on the quality of the statement. Some statements are vague and contain almost no concrete commitments, and others are very detailed and contain clear commitments (see for example the Colombia statement of 1998).[16]

Opinions on the use of chairperson's statements differ widely. Governments of countries in which serious human rights violations occur tend to prefer this form of 'condemnation' to a country resolution, which is regarded as confrontational. By contrast, NGOs regard a chairperson's statement as a poor substitute for a country resolution and are critical of the increased use of this instrument.

A number of measures could easily be taken in the future to strengthen chairperson's statements. At present these statements are 'hidden away' in the official report of the Commission session. This is because the Commission itself does not adopt a formal position on a chairperson's statement; the statement is therefore not included in the list of resolutions and decisions of the Commission. It is therefore recommended that after the statement has been read out by the chairperson the Commission should pass a decision 'taking note' of the statement. Such a proposal need not cause any great problems since there would be no differences of opinion regarding the text as such. The decision, accompanied by the chairperson's statement, could then be included in the list of resolutions and decisions in the official report of the Commission. This would also facilitate public scrutiny of the follow-up to the programme items included in the statement.

Efforts must also be made to ensure that chairperson's statements include an operational framework designed to promote an active dialogue between the country concerned and the Commission. Examples of operational provisions of this kind are the invitation and admission of special rapporteurs, who can arrange the form and content of the dialogue on behalf of the Commission. In this way, a chairperson's statement could be an effective instrument in cases where the government of the country concerned is clearly prepared to cooperate with the UN. However, the over-use of chairperson's statements must be avoided, since the replacement of resolutions by statements solves little and simply shifts the problem. It should therefore be made clear, both generally and to the country concerned, that if the chairperson's statement has no effect because the commitments are not fulfilled, serious consideration will be given to the submission of a country resolution.

*Inclusion in thematic resolutions and interventions*

References in thematic resolutions to the situation in particular countries have become increasingly common in recent years. In many cases there can be no objection to this practice of inclusion. A thematic approach is often a disguised form of country approach and can in this respect therefore have the desired effect of condemnation.[17] An important condition for the use of this instrument is, however, that it should not lead to countries no longer being clearly and explicitly held accountable for human

16 See UN Doc. E/1998/23, pp. 293-298.

17 An example of this is the report of the Special Rapporteur on Torture regarding his visit to Turkey. The report is entitled 'Visit by the Special Rapporteur to Turkey', UN Doc. E/CN.4/1999/61/Add.1, pp. 27-32.

rights violations, since this would adversely affect the position of victims of specific violations. Another disadvantage is that thematic reports are often ready only at a late stage and even then do not receive sufficient attention from the Commission because of the huge quantity of other documents.

There are also drawbacks to the inclusion of specific human rights situations in interventions such as those of the EU presidency. Although the mention of specific countries in an intervention does indicate that the country (or group of countries) giving the speech has taken note of the human rights situation, the reference to the countries responsible is necessarily rather fleeting. A denunciation by the Commission of the human rights situation in a given country in the form of a resolution obviously has a much greater impact than the mere mention of a country in interventions of the countries (or NGOs) taking part in the Commission. The AIV therefore believes that there are cases where the human rights situation in a given country is such that their inclusion in thematic resolutions or interventions would be insufficient.

*Critical dialogue*

It was stated in the request for advice that it would be appreciated if the AIV would also examine the instrument of critical dialogue. Although this instrument has hitherto been used mainly outside the multilateral framework of the UN (and hence of the Commission too) it may be seen as an addition to the Commission's instruments and also has an effect on decision-making and the attitudes that states adopt during the sessions of the Commission.

Critical dialogue is an instrument that can possibly provide a solution if others are not politically feasible or prove ineffective, as in the cases of China and Algeria. By giving undertakings in certain fields, for example by signing and ratifying certain conventions, a country can try to avoid a public condemnation in a resolution of the Commission. In such cases a critical dialogue at government level with the relevant state can be an important means of improving the human rights situation, but the success of this instrument depends on the conditions subject to which it is conducted.

The main drawbacks of a critical dialogue are the lack of transparency and the difficulty of monitoring performance. This makes it even more difficult to determine the results of using this instrument. Governments are not inclined to be open about the actual state of affairs. Often there is little public knowledge of a critical dialogue, certainly in the countries where the dialogue is conducted. Critical dialogue should not be resorted to as a mere palliative or used as an excuse for not taking concrete action.

Where the use of critical dialogue is being considered, it is of great importance to remember on whose behalf it is being used and what the purpose of the dialogue is. As mentioned above, a dialogue is usually conducted at the level of states (or groups of states, such as the EU).[18] The importance of coordination between countries conducting a simultaneous dialogue is obvious. This also avoids a situation in which a country or group of countries plays an unduly high-profile role and other like-minded countries feel they are being sidelined. This is also why joint action is generally preferable to individual action.

18 China is engaged in a 'dialogue' with the following interlocutors: Australia, Canada, the EU and the United States of America. The dialogue with the United States was suspended following the rocket attack on the Chinese Embassy in Belgrade in the spring of 1999.

It was mentioned earlier in this section that a critical dialogue can influence the position of states that take part in the sessions of the Commission. It is therefore important that countries which are involved in a dialogue should cooperate effectively with UN agencies such as the HCHR Office, with the UN Secretary-General, with special rapporteurs, with the treaty supervisory bodies and with the UN field offices. They too can play their own important part in this field.

The treaty supervisory bodies have an important role because they are responsible for establishing a dialogue with the treaty signatories regarding the country reports submitted by them. The results of this dialogue and compliance with the recommendations of the supervisory bodies should play a major part both in the decision in the Commission on what action to take and in the context of other forms of dialogue.

The AIV believes that there will be good opportunities in the future for the HCHR and the UN field offices to play a constructive role in the dialogue with a country; they are inextricably linked together. The opportunities for the High Commissioner are mainly at government level and those for the UN field offices at local level. Such offices come under the responsibility of the HCHR and are much better informed about specific developments in the country than the staff in Geneva or in the capitals, and can therefore have an advisory function as well as engaging in dialogue. What works in one country may not work in another: the political, cultural and other differences may be too great for this. The AIV is aware that certain countries are trying to limit the scope of the UN field offices;[19] nonetheless, it is precisely in this field that the AIV sees sufficient, non-politicising opportunities for the UN field offices to play a constructive role. This can certainly apply if the UN field offices also clearly emphasise the issue of economic, social and cultural rights in their work.

The AIV would observe that a critical dialogue conducted by states and/or the HCHR and the UN field offices can be an important instrument. The human rights situation in a country can, in the long term, be influenced for the better if the High Commissioner and the UN field offices play an active role. This is why any dialogue should include both criticism and advice. It is of great importance for ordinary people and the victims of human rights violations to be able to see the results of dialogue. The AIV therefore recommends that the submission of a country resolution in the Commission should be retained as a serious option for cases in which dialogue ultimately fails to have the desired effect.

It is evident from the above that the question raised in the request for advice, namely whether country resolutions or thematic resolutions are still appropriate instruments, does not admit of a simple yes or no. Clearly, the Commission will continue in the future to be involved with cases of human rights violations in specific countries. The use of country resolutions should certainly be maintained as an option. In this way public attention is focused on the violations and pressure brought to bear on the governments of the countries where they take place. Whether a country resolution should be submitted depends very much on whether other instruments and procedures seem likely to be more effective. Depending on the specific situation and the effectiveness of the instrument in that situation, it is therefore possible to sort through the 'toolkit'

19 Particularly the countries that belong to the 'Like-Minded Group'. See also footnote 15.

to choose the most appropriate instruments and methods. The basic premise should always be that there must be a perceptible improvement in the position of victims of human rights violations.

### III b Economic, social and cultural rights

The request for advice refers to the fact that the Commission's agenda increasingly encompasses subjects that are only indirectly connected with human rights. It also points out that socioeconomic and cultural policy is being discussed more and more frequently in the Commission. This led to the question of whether the debate on the implementation of economic, social and cultural rights should be conducted primarily in the specialised agencies of the United Nations rather than in the Commission.[20]

To answer this question it is necessary first of all to determine precisely what is being talked about. In the view of the AIV the basic premise should be that the Commission has a major role to play with respect to all rights contained in the International Bill of Human Rights, i.e. both civil and political rights and economic, social and cultural rights. The indivisibility (and interdependence and equality) of all human rights is an important principle of international law (and one to which the Netherlands too subscribes).

Since the second half of the 1980s the Commission has paid increasing attention to economic, social and cultural rights.[21] This interest has resulted in, among other things, a request to the Sub-Commission to make a comprehensive study of problems and practical measures relating to their implementation; the Commission also adopted an increasing number of resolutions dealing with the problems of implementation. These resolutions often emphasise aspects which deserve the special attention of states, for example the human rights dimension of population transfer, human rights and income distribution, the realisation of the right to adequate housing, the realisation of the right to development, human rights and extreme poverty, and trade union rights.

This ever widening range of resolutions on economic, social and cultural rights is the background to the question of whether the debate on their implementation could not better take place outside the Commission. In view of the position of the Commission within the UN organisation as a whole, it is evident that it has both a right and a duty to play a role in relation to the rights dealt with in the specialised agencies.[22] Under ECOSOC resolutions[23] the Commission is responsible for coordinating the work of the

20 As the request for advice deals only with the relations between the specialised agencies and the Commission, the AIV will disregard in this section another relevant forum, namely the Committee monitoring compliance with the ICESC.

21 For a detailed description of this problem see: ACM, 'Economic, social and cultural human rights', advisory report number 18, The Hague, 1994.

22 On this point see inter alia chapter II.

23 ECOSOC resolution 5 (I) of 16 February 1946 and resolution 9 (II) of 21 June 1946.

specialised agencies. In principle, therefore, the issue of these rights comes within the mandate of the Commission.[24]

In addition to the formal arguments described above, there are other factors relevant to the functioning of the Commission. If the attention paid to economic, social and cultural rights were to slacken, all the existing differences between the various consultation groups (e.g. the Western group and the Non-Aligned Countries) would become even more pronounced. Asian and African countries in particular quite often argue that although the Western world does indeed base its human rights policy on the principle of the indivisibility of all rights, it lays all the emphasis in practice on the observance of civil and political rights. By doing so, the West creates a dividing line which is at odds with, among other things, the Declaration of the Second World Conference on Human Rights in Vienna (1993).[25] As the AIV has maintained in the past, such objections should be assessed on their merits.[26] Moreover, the idea of relinquishing the debate (or most of the debate) on the implementation of economic, social and cultural rights would be incompatible with the call made by the Dutch Minister of Foreign Affairs himself in his speech to the Session of the Commission in 1998, when he urged the Commission to engage in a 'truly constructive dialogue on economic, social and cultural rights'.[27]

This is not to say, of course, that the UN bodies and specialised agencies other than the Committee on Economic, Social and Cultural Rights and the Commission do not have their own important role to play in the implementation of these rights. Many agencies already have their own extensive programme for the implementation of human rights (e.g. the ILO, UNICEF and UNDP). Although the communication between the Commission and specialised agencies such as the ILO, UNESCO, IMF and the World Bank is still deficient in some ways and gives rise to friction, the cooperation between these bodies and the HCHR Office has improved in recent years. Although this practical cooperation still tends to be on a one-off basis, it could help to improve the human rights situations in the countries where these specialised agencies are active if the Commission made better use of their expertise. It is essential for specialised agencies not only to implement their own programmes in the area of economic, social and cultural rights but also to keep watch for abuses generally and to inform the HCHR Office and the Commission when they identify such abuses. Cooperation with the ILO in particular, which has a long tradition of human rights protection, should be strengthened. It is gratifying to note that more and more elements of the UN system, such as the ILO, UNESCO, UNICEF, UNDP and the World Bank, are gradually developing strategies that

24 The Netherlands Government too takes this view, according to the speech given on 8 April 1999 under item 10 (ESC rights) of the agenda of the 55th Session of the Commission.

25 See, inter alia, the Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/93 of 25 June 1993, sections 4 and 5.

26 See AIV, 'Universality of human rights and cultural diversity', advisory report no. 4, The Hague, June 1998. The main arguments involved in this debate are dealt with specifically on page 28.

27 Speech by Hans van Mierlo, Minister of Foreign Affairs, on 19 March 1998 during the Session of the Commission in Geneva. The speech was entitled 'Fifty years of the Universal Declaration of Human Rights and the realisation of economic, social and cultural rights'.

accord a central role to human rights.[28] The AIV recommends that the Netherlands Government should continue its vigorous encouragement and active support of cooperation between the Commission, other parts of the UN and the specialised agencies.

If the Commission and other UN bodies and specialised agencies were each to have their own role but also a collective role, this could in due course lead to an effective approach to both civil and political rights and economic, social and cultural rights. However, not all the rights contained in the ICESC are included in the mandates of the various specialised agencies. The Commission is the ideal forum for implementing the principle of the indivisibility and interdependence of all human rights and the AIV believes that this should continue to be so. All the instruments discussed above can and must be employed for this purpose. In the Commission the Netherlands should continue to be actively involved in the establishment of resolutions which deal with specific violations of economic, social and cultural rights and make recommendations for the solution of identified problems, for example through the intermediary of the specialised agencies. The resolutions could contain a specific request to these agencies. In this way the Netherlands could make a constructive contribution to the process of strengthening these rights both substantively and procedurally, thereby helping to ensure that the basic principle of the indivisibility, interdependence and equality of civil and political rights and economic, social and cultural rights is increasingly respected in practice.

### III c The role of NGOs

An important question in the request for advice concerns the role and activities of NGOs in the Commission. The request referred, for example, to the presence of a large number of NGOs at Commission sessions. NGOs are exercising their right to speak on the majority of items, thereby causing increasing problems with the agenda.

The AIV considers it important to view the role and functioning of NGOs in perspective. NGOs have made a real contribution to the development of the set of international standards that governs human rights. Their involvement goes right back to the drafting of the UN Charter and the Universal Declaration of Human Rights. Since then NGOs have played an important role, particularly within the Commission, in initiating and drafting human rights instruments. By making active use of the various political and treaty monitoring procedures, NGOs have helped to ensure that human rights have not remained a dead letter but are actually used as a criterion for assessing government action. They are, for example, largely responsible for the fact that resolutions 1235 and 1503 have been applied in practice. In this sense NGOs have to some extent been able to make up for the democratic deficit evident in the functioning of the Commission as a body of government representatives. It should also be noted that recent discussions within the UN about NGO participation in functional commissions of ECOSOC have been held in a reasonably positive and constructive spirit and, far from leading to curbs on NGO's involvement, have actually given them more scope for participating in the activities of UN forums such as the General Assembly.

28 See inter alia: J. Häusermann, 'A Human Rights Approach to Development', a discussion paper commissioned by the Department for International Development of the UK Government, London 1998.

The AIV therefore believes that it is necessary to be cautious when criticising the role of NGOs in the human rights field. As already mentioned, most NGOs make a real contribution to the core function of the Commission in protecting and promoting human rights; the good organisations should therefore not be punished along with the bad. Some NGOs are regarded by government delegations as irksome, for example because they wish to have the floor too often, raise issues which are not on the agenda or have a rather 'annoying' way of working which is thought to be less than productive or even totally unproductive. In recent years, this criticism has quite regularly led to suggestions and proposals by governments to impose limitations on the functioning of NGOs within the framework of the Commission.

It should be noted that in practice there has already been some regulation and improvement. The limitations on speaking time and on the length of written contributions has led to greater coordination among the NGOs, especially of their oral interventions. However, this cooperation needs to be improved. On the basis of the experience gained during the preparations for the World Conference on Human Rights (1993), the Social Summit (1995) and the Women's Conference (1996), the NGOs could consider holding consultations more frequently before the sessions of the Commission in order to adopt common positions on the main points. This could also help improve access to the large quantity of information available. In addition it might be possible in the future to organise more hearings and briefings that would put the consultations between NGOs and, for example, the special rapporteurs on a structural footing. If such meetings could be held this would probably reduce the need for oral and written interventions and enhance the effectiveness of the activities of the Commission as a whole. The AIV also believes that the problem of the Commission's overloaded agenda and the long meetings to which this gives rise could be better tackled by adopting good management techniques for meetings than by limiting the scope for NGOs to take part in the debate.

# IV Relations between Commission and Sub-Commission

As mentioned above, reform of the agenda was initiated in 1998. This has led to a wide range of proposals for improving procedure at meetings and for reviewing and reclassifying agenda items. Chapter II dealt briefly with the debates during the 55th Session of the Commission in 1999. In this chapter the AIV will deal more specifically with a number of recommendations concerning the Sub-Commission (for the relevant recommendations see annex III).

*Mandate and context*

On the authority of ECOSOC and prompted by the importance attached to the subject at the time, the Commission established the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities in 1947. According to its original mandate the Sub-Commission was required to undertake studies and make recommendations concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities. The Sub-Commission was also authorised to perform any other functions that might be entrusted to it by ECOSOC or the Commission. It is this open-ended formula which explains the later expansion of its tasks.

During the first stage of its existence the Sub-Commission produced authoritative studies aimed above all at eliminating discrimination. Its work concerning the protection of minorities was initially limited. In recent years, however, the Sub-Commission has done important work aimed at finding and promoting peaceful and constructive solutions to the problems affecting minorities.[29] The open-ended wording of the Sub-Commission's original mandate has been used over the years gradually to broaden its remit. The Sub-Commission has grown from a research organisation into a body that initiates and advises on human rights policy, although it has remained subordinate to the Commission and ECOSOC. Each new or extended function was either initiated by or required the approval of both the Commission and ECOSOC. When the Commission began to concern itself more intensively with large-scale and systematic violations of human rights and designed procedures for this purpose, it therefore requested the Sub-Commission to play a substantial role in these procedures.[30] The Sub-Commission was also given a role to play in the context of the confidential complaints procedure.[31]

Over the years different working groups have been established to focus on specific (often vulnerable) groups in society.[32] Just how much the activities and terms of reference of the Sub-Commission have expanded and changed on both a structural and a

29 The main result is contained in a study by A. Eide, who laid the basis for the establishment of a special working group on minorities (1995).

30 See ECOSOC resolution 1235 (XLII, 1967) and resolution 8 (XXIII), paragraphs 2 and 6.

31 See ECOSOC resolution 1503 (XLXIII, 1970).

32 The issues dealt with by these working groups include contemporary forms of slavery, the rights of indigenous populations, minorities and the administration of justice.

one-off basis is evident from the varied nature of the 40-odd resolutions and decisions adopted during its 1998 session.[33]

The expansion of the Sub-Commission's functions in the procedures connected with human rights violations is the main reason for its increasing importance within the overall UN human rights programme, with all the attendant advantages and disadvantages. Major disadvantages include lack of focus, the loss of quality of studies, oversubscribed agendas and poor coordination with the other parts of the programme. It was therefore almost inevitable that as the Sub-Commission's activities started to have an increasing impact on the interests of governments they would acquire an increasing political dimension. This in turn led to growing dissatisfaction and a degree of mistrust on the part of the Commission. On the other hand, there is also a more positive side to this expansion of the remit. More than any other UN body in the human rights field, the Sub-Commission and its working groups serve as a forum to which NGOs can gain easy access and where marginalised groups can get a hearing. The Sub-Commission serves as a kind of human rights laboratory where new ideas and trends are identified and discussed and which gives new impetus to the human rights programme.

*Proposals of Selebi report*

The AIV assesses below the proposals contained in the Selebi report, taking account of the context, and concentrates on the main recommendations.

Generally speaking, the AIV welcomes the review of the Sub-Commission, which has existed for over 50 years and now finds itself subordinate to a totally different Commission that has many new instruments. At the same time, there continues in any event to be a need for independent expertise, which can and must be supplied by the Sub-Commission. Nonetheless, it is important in this respect that the Sub-Commission should review its own working methods. The AIV therefore endorses the recommendation on the working methods. It is, however, essential that the Sub-Commission receives adequate support from the HCHR Office, for example in the form of sufficient financial resources and staff.

As noted above, the Sub-Commission has, over the years, been assigned functions in the context of the confidential procedure for dealing with communications relating to human rights violations (ECOSOC resolution 1503). The Sub-Commission has been asked in particular to make a selection of complaints that appear to reveal a consistent pattern of gross violations of human rights and to bring these situations to the attention of the Commission. The AIV endorses the recommendation in the Selebi report to the effect that the 1503 procedure should be concentrated at Commission level. This would greatly expedite the procedure and help relieve the pressure of work on the Sub-Commission. In addition, this step could help to bring about the much-needed depoliticisation of the work of the Sub-Commission.

The AIV does not, however, support the proposal to reduce the number of members and shorten the length of the annual sessions. Above all, the proposal to reduce the annual sessions to two weeks is too drastic and would make it virtually impossible to

33 See E/CN.4/Sub.2/1998/45 of 30 September 1998.

give form and substance to the work of this body in a serious manner. This recommendation is not consistent with the recommendations that the Sub-Commission should conduct its research and study projects more thoroughly, that it must produce agreed recommendations and that it must produce an annual report of its findings on human rights violations in all parts of the world. There is no way in which these activities, if taken seriously, could be performed in two weeks, even if the inadequate support presently provided by the HCHR Office were to be improved. Nor, against this background, can the AIV endorse the recommendation that the number of members of the Sub-Commission should be reduced from 26 to 15. In view of the terms of reference and given the importance of having as many cultures (and legal systems) as possible represented within the Sub-Commission, this proposal is both undesirable and unfeasible. Provided that the members are committed, expert and independent, there is no reason why their number as such should be an obstacle to the proper functioning of the Sub-Commission.

The AIV supports the proposal that the members of the Sub-Commission should in the future be nominated rather than elected. Such a procedure would greatly help to depoliticise the Sub-Commission and would be in accordance with the proposals made to this effect by the former Advisory Committee on Human Rights and Foreign Policy. However, the AIV does not consider it a good idea to give the chair of the Commission a major role in the nomination procedure. It would, instead, seem desirable to examine other possibilities. The procedure for the appointment of the Committee of Experts of the International Labour Organisation could serve as an example. After consultations and selection by the Secretariat, the Director-General of the ILO makes a nomination, which is then approved by the Governing Body. By analogy with this procedure, the Secretary-General of the UN -or possibly the High Commissioner for Human Rights as the person with ultimate responsibility under the Secretary-General- could, after consultations and a check on compliance with such criteria as independence and expertise, make a nomination for approval by the Commission.

The AIV can generally support the recommendation that the mandate of the Sub-Commission should be thoroughly reviewed. Its study programme should be better defined and contain clearer priorities in order to enable it to function more effectively as a support for the entire human rights programme, including the work performed in monitoring observance of various conventions. It might be advisable in this connection to limit the number of studies in progress at any one time to six, in order to ensure that sufficient attention is paid to their preparation, execution and follow-up.

The AIV wishes to add that in any review of the functions of the Sub-Commission care should be taken to ensure that no 'good' elements are lost. An example would be the Sub-Commission's practice of paying special attention to specific, often vulnerable groups in national and international society. Such working groups can play an extremely useful function in identifying and analysing problems, putting forward solutions and developing programmes for groups. In addition, they serve as an important consultation forum. The proposals for reform should therefore be considered with care. It is necessary to avoid any diminution in the importance of these forums, to which the groups in question often attach great importance. In addition, the AIV would point out that when studies are prepared it is desirable not only that interested governments, international organisations and NGOs be allowed to make proposals and supply substantive contributions to the Sub-Commission but also that the treaty bodies should be given the opportunity to make proposals for projects or studies.

The AIV believes that the Sub-Commission can continue to play an important and distinctive role in the future. This is why it feels it is important that the Sub-Commission should continue to exist. If the Sub-Commission is to perform its tasks more effectively, however, improvements are desirable and the position of the Sub-Commission should be reviewed. Subject to the above remarks, the proposals contained in the Selebi report can serve as a good guide for the position to be taken by the Netherlands Government.

# V Summary of the recommendations

On 29 October 1998, the Minister of Foreign Affairs, the Minister of Defence and the Minister for Development Cooperation asked the AIV to produce an advisory report on the working methods and functioning of the United Nations Commission on Human Rights. The request centred on three questions. First, the AIV was asked to give its views on whether country and thematic resolutions are still appropriate instruments for ensuring observance of human rights. Second, it was requested to assess whether the debate on the implementation of economic, social and cultural rights should be conducted primarily in the specialised agencies and financial institutions. And, finally, it was asked for its opinion on the role and functioning of NGOs.

Besides considering some general aspects the AIV has dealt successively in the present report with these three questions, taking account of the context in which the work of the Commission is performed. As this context has changed greatly over the decades, it has been difficult in practice to give effect to changes and improvements to the working methods of the Commission. The AIV is aware of this feasibility problem, but has decided in this report to examine whether certain modifications might in the longer term enable the Commission to function better. It should be noted that the functioning of the Commission must be viewed in the context of the functioning of the UN human rights programme as a whole. In the view of the AIV it would be advisable to analyse all aspects of this problem in the near future. In this report the AIV does, however, concentrate on the Commission.

The AIV makes the following recommendations to the Netherlands Government:

*Country and thematic resolutions and other instruments*

- The question of whether country and thematic resolutions are still the most appropriate instruments does not in general admit of a simple yes or no answer. What is most important is that the Commission should continue in the future to be involved with concrete cases of human rights violations in particular countries. The use of country resolutions should therefore certainly be maintained as an option. Under the terms of the Treaties of Maastricht and Amsterdam, the Netherlands is obliged to try to reach agreement on a common EU approach within the framework of the Common Foreign and Security Policy (CFSP). If such a common approach proves impossible, the Netherlands should not baulk at submitting such a resolution either alone or together with like-minded countries in cases involving gross violations of human rights.
- Depending on the specific situation and the effectiveness of the instrument in that situation, it is therefore possible to sift through the 'toolkit' to choose from the other instruments and methods available to the Commission. The basic premise should always be that using the instrument will bring about a perceptible improvement in the position of victims of human rights violations.
- An instrument that can be used if a country resolution is not immediately possible or would be undesirable in a specific situation is a chairperson's statement. A number of measures could be taken to strengthen chairperson's statements. It is essential for such statements to be more easily traceable in the decision-making process. This could be achieved by mentioning these statements separately in the report of the sessions of the Commission. It would also be desirable for the Com-

mission to pass a decision taking formal note of the statement, once it has been read out by the chairperson. Finally, efforts should be made to ensure that chairperson's statements include an operational framework designed to promote an active dialogue between the country concerned and the Commission. If the chairperson's statement has no effect in that the commitments are not fulfilled, serious consideration should be given to the submission of a country resolution.

- The AIV recommends a cautious approach to the inclusion of country situations in thematic resolutions and interventions. An important condition for the use of these instruments is that they should not lead to countries no longer being clearly and explicitly held accountable for human rights violations. If the human rights situation in a given country is serious enough to warrant a country resolution, it is not sufficient to include a mention of them in thematic resolutions or interventions.
- The initiation of a critical dialogue can in some cases be an important means of improving the human rights situation. However, critical dialogue should not be resorted to as a mere palliative or as an excuse for not taking concrete action. The AIV believes that a greater role could be played in this connection by the treaty supervisory bodies, the High Commissioner for Human Rights and/or the UN field offices, particularly if the UN field offices also clearly emphasise the problem of economic, social and cultural rights in their work. It is of great importance to continue assessing the effects of the dialogue on the position of the general public and the victims of human rights violations. The submission of a country resolution in the Commission should be retained as a serious option for cases where a dialogue ultimately fails to have the desired effect.

*Economic, social and cultural rights*

- The Commission is and will continue to be the forum in which the principle of the indivisibility and interdependence of all human rights is given effect. In the Commission the Netherlands should be (or should continue to be) actively involved in the establishment of resolutions related to economic, social and cultural rights, which deal with specific violations and make recommendations for the solution of identified problems. By acting in this way the Netherlands can make a constructive contribution to the process of strengthening these rights both substantively and procedurally, thereby helping to ensure that the basic principle of the indivisibility, interdependence and equality of civil and political rights and economic, social and cultural rights is increasingly observed in practice.
- An approach in which the Commission and other UN bodies and specialised agencies each have their own role but also a collective role could in due course produce an effective way of achieving both civil and political rights and economic, social and cultural rights. It is of great political and legal importance that a balanced approach be adopted in dealing with all human rights. The Commission can play a coordinating role in this respect.
- The AIV recommends to the Netherlands Government that it should continue its vigorous encouragement and active support of cooperation between the Commission and the specialised agencies.

*The role of NGOs*

- The AIV believes that it is necessary to be cautious when criticising the role of NGOs in the human rights field. Most NGOs make a real contribution to the core function of the Commission in protecting and promoting human rights. The AIV believes that the problem of the overloaded Commission agenda and the long meetings to which this gives rise could be better tackled by adopting good management techniques for meetings than by limiting the scope for NGOs to take part in debate.

- The AIV notes that in practice there has already been some regulation and improvement of cooperation between NGOs, especially coordination of their oral interventions. However, this cooperation needs to be improved still further. NGOs could also consider holding consultations more frequently before the sessions of the Commission in order to adopt common positions on the main points. This could also help to improve access to the huge quantity of information available. It might also be possible in the future to organise more hearings and briefings that would put the consultations between NGOs and, for example, the special rapporteurs of the Commission on a structural footing. This could enhance the effectiveness of the activities of the Commission as a whole.

*Relations between Commission and Sub-Commission (Selebi report)*

- The results of the debate on the Selebi report during the 55th Session of the Commission were disappointing. The AIV recommends that the Netherlands Government continue to play an active part in the inter-sessional working group established for this purpose. This is because it believes that the Sub-Commission will continue to play an important and distinctive role in the future too.
- The AIV endorses the recommendation concerning the improvement of working methods. It is, however, essential that the Sub-Commission receives adequate support from the HCHR Office.
- The AIV supports the recommendation that the 1503 procedure should be concentrated at Commission level. This would greatly expedite the procedure and help relieve the pressure of work on the Sub-Commission. In addition, this step could help to bring about the much-needed depoliticisation of the work of the Sub-Commission.
- The AIV does not support the proposal to shorten the length of the annual sessions. The proposal to reduce the annual sessions to two weeks is too drastic and would make it virtually impossible to give form and substance to the work of this body in a serious manner (for example, the preparation of the proposed annual report of its findings on human rights violations in all parts of the world).
- In view of the terms of reference and given the importance of having as many cultures (and legal systems) as possible represented within the Sub-Commission, the proposal to reduce the number of members from 26 to 15 is both undesirable and unfeasible. However, the AIV supports the proposal that the members of the Sub-Commission should in future be nominated rather than elected. Such a procedure would greatly help to depoliticise the Sub-Commission. The AIV does not, however, consider it a good idea to give the chair of the Commission a major role in the nomination procedure. It would, instead, seem desirable to look at other possibilities. The procedure for the appointment of the Committee of Experts of the International Labour Organisation could serve as an example.
- The AIV can generally support the recommendation that the mandate of the Sub-Commission should be thoroughly reviewed by defining the study programme better and establishing clearer priorities. The number of studies in progress at any one time should be limited to a maximum of six. However, care should be taken to ensure that no 'good' elements of the way in which the Sub-Commission operates, for example the focus on specific and often vulnerable groups in society, are lost in the process. Finally, the AIV would point out that when studies are prepared it is desirable not only that interested governments, international organisations and NGOs should play a role but also that the treaty bodies should be given the opportunity to make proposals to the Sub-Commission for projects or studies.

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*Re:* Request for advice on the functioning of
the United Nations Commission on Human Rights

Dear Professor Lubbers,

In response to a request by Mr Koenders in the Lower House of Parliament for 'a memorandum setting out the views of the government on the functioning of the United Nations Commission on Human Rights, and on possible ways of improving UN human rights monitoring and relevant EU decision-making', the former Minister of Foreign Affairs agreed to ask the Advisory Council on International Affairs to submit recommendations.

As you know, the former Advisory Committee on Human Rights and Foreign Policy (ACM) issued two exhaustive reports on the subject of UN human rights monitoring. The ACM made a detailed analysis of the problems affecting treaty procedures in both 1988 and 1996, and put forward valuable recommendations on possible improvements. These recommendations also served as important input in meetings of treaty committee chairpersons. In 1996, the ACM also issued recommendations on the role of the Subcommission on Prevention of Discrimination and Protection of Minorities.

In view of the above, we would request the Council to submit recommendations on possible improvements to the working methods of the Commission on Human Rights itself. We are asking not so much for an assessment of the system of human rights mechanisms (the ever-growing complex of special rapporteurs, representatives, procedures and committees), since the Commission is currently looking into this itself, as for an assessment of the functioning of the Commission, in particular its agenda and the instruments it uses, such as country and thematic resolutions.

The Commission's agenda grows longer each year, and increasingly encompasses subjects that are only indirectly connected with human rights. Moreover, it discusses socioeconomic and cultural policy more and more frequently. Would it not be preferable for the debate on the implementation of economic, social and cultural rights (including the appointment of special rapporteurs) to be conducted primarily in the specialised agencies of the UN, certainly since the notion of mainstreaming is now gaining ground?

We are also seeking recommendations on the country and thematic resolutions. Are these the most appropriate instruments to ensure observance of human rights? Are there any other instruments that could be used to put more effective pressure on notorious offenders? In this regard, we would be grateful if the Council were also to examine the instrument that has recently been introduced, i.e. critical dialogue.

Finally, we would request the Council to put forward its views on the role and activities of the growing group of non-governmental organisations in the Commission on Human Rights. Approximately 600 organisations now have observer status in the Commission. Since this implies the right to speak on many items, lists of speakers are inevitably over-subscribed.

We would be very grateful if the Council would furnish us with recommendations on the above questions, and any other related issues.

Yours sincerely,

(signed)

Jozias van Aartsen
Minister of Foreign Affairs

(signed)

Frank de Grave
Minister of Defence

(signed)

Eveline Herfkens
Minister for Development Cooperation

**Recommendation 12 of the report of the Bureau of the fifty-fourth session of the Commission on Human Rights submitted pursuant to Commission decision 1998/112; Rationalization of the work of the Commission**

**RECOMMENDATION 12**

(a) Reflecting the role of the Sub-Commission in assisting the Commission to address a broad range of human rights issues, it should be renamed 'the Sub-Commission on the Promotion and the Protection of Human Rights';

(b) Reflecting the proposed sharpening of the Sub-Commission's role as an independent expert body focusing its attention on priorities determined by the Commission:

(i) The membership of the Sub-Commission should be reduced to 15 members, nominated by the Chair of the Commission in consultation with the Bureau, on the basis of their expert qualifications, to serve a four-year term, renewable for a maximum of one additional four-year term. To preserve the image of the Sub-Commission as an independent expert body, no member should be concurrently employed in the executive branch of their country's Government;

(ii) The length of annual sessions of the Sub-Commission should be reduced to two weeks;

(c) The Sub-Commission's work and priorities should be based on tasks entrusted to it by the Commission on Human Rights, with the principal focus on the elaboration of studies, research and expert advice at the request of the Commission. The Commission should regard the Sub-Commission's experts as its foremost resource for the performance of such assignments, rather than appointing others to undertake expert research and analysis; and in considering the assignment of projects to the Sub-Commission, the Commission might consider relevant proposals from the High Commissioner for Human Rights, from other United Nations human rights institutions and from the Sub-Commission itself;

(d) The Sub-Commission's working methods in respect of its research and study projects should, consistent with the independent expert character of the body, entail a well-prepared, thorough peer-review process culminating in an analytical report to the Commission comprising the final text of the study in question, any agreed recommendations on further steps and a summary of major observations of members of the Sub-Commission. This approach would preclude the need for negotiating traditional resolutions for submission to the Commission. While the Sub-Commission's deliberations should provide opportunities for interested Governments, international organizations and NGOs to provide input into this process, the experts should also be prepared to dedicate adequate time to private deliberations on their projects, inter alia in the framework of sessional working groups such as the existing working group on the administration of justice;

(e) Recognizing the important opportunities the Sub-Commission and some of its subsidiary bodies play in affording a public forum for concerned parties to raise their human rights concerns:

(i) The Sub-Commission should continue to conduct an annual debate on human rights violations in all parts of the world. However, rather than leading to the negotiation of resolutions, this debate should be reflected in a summary to the Commission as part of the Sub-Commission's annual report;

(ii) The Sub-Commission's inter-sessional Working Groups on Minorities and on Indigenous Populations should continue to perform the valuable work they are engaged in, the latter until such time as the question of its future status is resolved in the context of the Commission's deliberations on a permanent forum for indigenous people in the United Nations system. The question of the Working Group on Contemporary Forms of Slavery is addressed in recommendation 1 above;

(f) As regards transitional arrangements associated with these proposed changes, the Bureau recommends that the Commission devise a transitional process aimed at bringing the recommended reforms fully into effect for the fifty-second session of the Sub-Commission in the year 2000.

## Key of abbreviations

| | |
|---|---|
| **ACM** | Advisory Committee on Human Rights and Foreign Policy |
| **AIV** | Advisory Council on International Affairs |
| **CFSP** | Common Foreign and Security Policy |
| **CMR** | Human Rights Committee of the Advisory Council on International Affairs |
| **Commission** | United Nations Commission on Human Rights |
| **ECOSOC** | Economic and Social Council of the United Nations |
| **EU** | European Union |
| **FAO** | Food and Agriculture Organisation |
| **HCHR Office** | Office of the High Commissioner for Human Rights |
| **ICCPR** | International Covenant on Civil and Political Rights |
| **ICESC** | International Covenant on Economic, Social and Cultural Rights |
| **ILO** | International Labour Organisation |
| **IMF** | International Monetary Fund |
| **NGO** | Non-Governmental Organisation |
| **Selebi report** | Report of the Bureau of the 54th Session of the Commission on Human Rights, submitted pursuant to Commission Decision 1998/12 (UN Doc. E/CN.4/1999/104) |
| **Sub-commission** | United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities |
| **UN** | United Nations |
| **UNDP** | United Nations Development Programme |
| **UNESCO** | United Nations Educational, Scientific and Cultural Organisation |
| **UNICEF** | United Nations International Children's Emergency Fund |
| **WHO** | World Health Organisation |

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